Supreme Court, U.S.
FILED

CASE NO. 941550 FEB 13 1995

OFFICE OF THE CLERK

SUPREME COURT of the UNITED STATES

OCTOBER, 1994 TERM

CHALLONER MORSE McBRIDE,

Petitioner,

vs.

STATE OF WISCONSIN,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE WISCONSIN SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

and

APPENDIX A

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ISSUE PRESENTED

WAS THE JUDGE WHO SIGNED THE SEARCH WARRANT A NEUTRAL AND DETACHED MAGISTRATE AS IS REQUIRED BY BOTH THE WISCONSIN AND UNITED STATES CONSTITUTIONS [THE FOURTH AMENDMENT] WHEN THE FACTS DEMONSTRATE THAT FOR OVER TWENTY MONTHS PRIOR TO THE ISSUANCE OF THE SEARCH WARRANT THE JUDGE HAD RECUSED HIMSELF FROM EVERY CASE THE DEFENDANT, WHO WAS A FEMALE ATTORNEY, HAD BEFORE THE JUDGE DUE TO THE FACT THAT THE DEFENDANT HAD COMPLAINED BOTH TO THE CHIEF JUDGE OF THE EIGHTH JUDICIAL DISTRICT AND THE WISCONSIN JUDICIAL COMMISSION CONCERNING THE JUDGE'S TREATMENT OF THE DEFENDANT AND HER FEMALE CLIENTS?

LIST OF PARTIES

The parties to the proceedings are the petitioner and the respondent.

The petitioner represents herself, pro se, although she did not at trial or at appeal to the Wisconsin Court of Appeals.

The respondent was represented by Attorney Matthew Frank, Wisconsin Attorney General's Office, Madison, WI at trial, and by Attorney David J. Becker, Wisconsin Attorney General's Office on appeal, both of Attorney General, James Doyle's office.

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APPENDIX 100

IN THE SUPREME COURT
OF THE UNITED STATES
October Term 1994

CHALLONER MORSE McBRIDE,
Petitioner,

v.

STATE OF WISCONSIN,
Respondent.

PETITION FOR WRIT OF CERTIORARI

Challoner Morse McBride, petitioner, (hereinafter "the defendant") petitions this court, pro se, pursuant to Rule 12 of the Rules of Criminal Procedure, to review the decision of the Court of Appeals of Wisconsin (filed on September 7, 1994) (App. 103-19), and the decision of the Wisconsin Supreme Court not to accept her Petition for Review (dated November 16, 1994) (App. 101-02).

CONCISE STATEMENT OF JURISDICTION

The defendant's motion to suppress on this and other grounds was denied by the trial court. On appeal to the Wisconsin Court of Appeals, that court affirmed the decision of the trial court, holding that the defendant had failed to prove that the judge was actually biased against her (App. 103-19). The Wisconsin Supreme Court denied defendant's Petition for Review on November 16, 1994 (App. 101-02). No rehearing or extension of time has been granted.

The issue presented by this case is a question of first impression in the State of Wisconsin and in the entire United States. The defendant was a practicing attorney in Door County, Wisconsin at the time that a search warrant was issued for her law office. The only judge in Door County had made it a practice for over

twenty months prior to the issuance of the search warrant to recuse himself from all cases involving her. This was a result of the defendant filing complaints concerning the judge's treatment of her and her female clients with the Chief Judge of the relevant Judicial District and with the Wisconsin Judicial Commission. The question presented for this court is whether, under these circumstances, the judge could function as the "neutral and detached" magistrate which the Constitution requires for the issuance of a valid search warrant.

This issue was first raised as a part of her suppression motion at trial court level (19:1-2; App. 149-51), has been litigated at the Wisconsin Court of Appeals (App. 103-19) and was prominent in her Petition for Review at the Wisconsin Supreme Court Level which was denied (App.

101-02).

The trial court determined that, when examined in the light of "high noon" (41:3; App. 125), Judge Koehn's issuance of a search warrant did not violate defendant's Fourth Amendment rights because ". . . there is no objective evidentiary basis to find that Judge Koehn's issuance of the search warrant for Attorney McBride's law office was an 'extreme' constitutional violation of the neutrality doctrine. Only if a magistrate's purported objectionable conduct is tantamount to a constitutional violation of due process is the neutrality doctrine violated. That did not occur here. There was no constitutional enervation of defendant's Fourth Amendment rights." (41:7; App. 133).

At the Wisconsin Court of Appeals, the same issue was decided, and that court

determined that Judge Koehn was a neutral and detached magistrate and that his constant self-disqualifications in defendant's cases (App. 113-15), as a reaction to her complaints to the Judicial Commission and others about his prejudice against her and her clients (App. 116-17), and her support of his opponents in the election (App. 115-16) were not enough to meet the defendant's burden of proving bias toward her by Judge Koehn (App. 117-19). The Court of Appeals summarized by saying, "[t]herefore,, because McBride has failed to demonstrate by a preponderance of the evidence that Judge Koehn was biased against her, we conclude that McBride's challenge to the search warrant must fail." (App. 118).

This issue presents a real and significant question of federal constitutional law. In addition, a

decision from this court would help to develop and clarify the law and, as the decision of the Court of Appeals demonstrates, this case calls for the application of a new doctrine, rather than the mere application of settled principles. The Court of Appeals' resolution of this issue is also in conflict with controlling decisions of the United States Supreme Court. This issue thus meets the criteria for review set forth in Rules 10, 11 and 14 and 28 U.S.C. § 2101(d).

PROCEDURAL STATUS OF THE CASE

On December 18, 1991, the defendant was charged by the filing of a criminal complaint with one count of theft by bailee as party to the crime contrary to Wis. Stat. 943.20(1)(b), and three counts of theft by fraud as party to the crime

contrary to Wis. Stat. 943.20(1)(d). (3:1-26).

A preliminary hearing was held on March 5, 1992 (94:1-204), at the conclusion of which the defendant was bound over for trial. An information (12) was filed, repeating the same four counts contained in the original criminal complaint, and on May 6, 1992 (95:1-32), the defendant was arraigned on the information.

On May 27, 1992, the defendant filed a motion to suppress physical evidence (19:1-2; App. 149-51). On June 10, 1992, the state filed a motion for a protective order to prevent the defendant from calling Judge John D. Koehn as a witness at the suppression hearing (25:1-2). After briefing and a hearing on the state's requested protective order, the trial court granted that request and

entered an order prohibiting the defendant from issuing a subpoena to or eliciting testimony from Judge Koehn (24:1-9; 26:1-5; 32:1).

On August 26, 1992, an evidentiary hearing (96:1-272) was held on the defendant's motion. The trial court's written decision denying the defendant's motion to suppress evidence was entered on December 15, 1992 (41:1-14; App. 120-48).

This case was tried to a jury of twelve in Circuit Court for Door County, with the jury picked from Brown County, the Honorable Philip M. Kirk presiding, on February 15-19, 1993 (98:1-1062). The defendant was convicted on all four counts and on May 20, 1993, was sentenced to concurrent terms of seven years in prison and a four-year sentence was imposed and stayed and the defendant was placed on probation for a period of three years

consecutive to the prison sentences.[1] In addition, restitution was ordered in the amount of $85,531 (99:1-90).

On December 1, 1993, a motion for postconviction relief pursuant to Wis. Stat. 974.02 and Rule 809.30 was filed with the Circuit Court for Door County (83:1-3). That motion challenged the restitution order and also requested relief based on the failure to instruct the jury that before the jury could answer "yes" to the question of whether the value of the property stolen was more than $2500 it must be satisfied of that fact beyond a reasonable doubt. On January 26, 1994, the trial court filed its written decision granting the defendant's motion with respect to the restitution and denying the

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[1] Defendant, J. Ronald McBride died of a heart attack on April 11, 1992, and Defendant, Challoner Morse McBride was left to face sentencing alone.

motion with respect to the failure to instruct the jury that it must determine value beyond a reasonable doubt (86:1-8). On February 1, 1994, the trial court's order granting in part and denying in part the defendant's motion for postconviction relief was entered (87:1).

The case was appealed to the Wisconsin Court of Appeals pursuant to a Notice of Appeal directed to the judgements of conviction and that portion of the trial court's order which denied the defendant's motion for postconviction relief (91:1). On September 7, 1994, the Wisconsin Court of Appeals issued its decision affirming the defendant's conviction (App. 103-19). That decision has been published as State v. McBride, 187 Wis.2d 408, 523 N.W. 2d 106 (1994). On November 16, 1994, the Wisconsin Supreme Court denied the

defendant's Petition for Review (dissented to by J. Abrahamson), leaving the Court of Appeals' decision to stand (App. 101-02). It is that decision of the Wisconsin Court of Appeals and denial of Petition for Review by the Wisconsin Supreme Court which the defendant is now appealing to the United States Supreme Court.

STATEMENT OF FACTS

Challoner Morse McBride, who was basically the only practicing female attorney in Door County, Wisconsin, was convicted of one count of theft by a bailee as party to the crime, contrary to Wis Stat. 943.20(1)(b), and three counts of theft by fraud as party to the crime, contrary to Wis. Stat. 943.20(1)(d).

Her convictions, and those of her husband, J. Ronald McBride, stem from the alleged theft of funds from Eulalia

Addison. Although the defendant maintains her innocence and maintained it at trial, she does not here challenge the sufficiency of the evidence to convict her. Therefore, an extended recitation of the facts adduced at trial will not be presented. Suffice it to say that the evidence demonstrated that Ms. McBride's husband, J. Ronald McBride (a non-attorney) befriended the elderly Mrs. Addison and, over the course of years, was found to have appropriated her funds without her knowledge.

Mr. McBride testified at the trial and denied that his wife was involved in this and, in fact, claimed that the monies at issue were gifts from Mrs. Addison to him, and that he told his wife that they were gifts (98:690-91). Challoner Morse

McBride DID testify at trial[2] and stated that she knew of some of the monies and had been told by her husband that they were gifts from Mrs. Addison (98:837-39, 875-77). Nevertheless, she was convicted, along with her husband, of the theft of the funds at issue.

The evidence was undisputed that Ms. McBride did not have any contact with Mrs. Addison related to the thefts and that she took no money directly from her. According to Mrs. Addison, she had not seen or been with Ms. McBride since 1984 (the time period of the alleged thefts was 1986-1991) (98:191). However, there was evidence that the defendant handled some of the checks at issue and, in fact, endorsed and deposited some of those

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[2] This is contrary to that which is stated in the Petition for Review (p. 7) to the Wisconsin Supreme Court. See 98:804-987.

checks and utilized the funds for personal and business expenses (98:276-512, 864, 868-872).

The issue presented by this case is whether Judge John D. Koehn, who signed the search warrant which allowed the search of the defendant's law office, was a "neutral and detached" magistrate, as is required by the Constitutions of both Wisconsin and the United States. The facts relevant to this issue were adduced at the hearing held on the defendant's suppression motion. That hearing took place on August 26, 1992 (96:1-272).

On June 3, 1991, Thomas J. Fassbender, a special agent with the Wisconsin Department of Justice, applied for a search warrant for the premises located at 306 South Third Avenue, Sturgeon Bay, Wisconsin known as the McBride Law Office. In both his

application and his oral testimony supporting the issuance of this warrant, Agent Fassbender stated that the prescribed premises contained documents and records related to work performed by the McBride Law Office and/or J. Ronald McBride for Eulalia I. Addison and the Eulalia I. Addison Foundation (E.I.A.F.). The application sought a warrant for those records, along with records of payments made by Eulalia I. Addison and all the financial records of the McBride Law Office.[3]

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[3] The search warrant and affidavit in support of the search warrant were admitted as Exhibit I at the suppression hearing on August 26, 1992. That exhibit is contained in record item 96B in the record. In addition, the transcript of the hearing at which the agents sought the search warrant was admitted at the suppression hearing as Exhibit J and is also included as an exhibit in item number 96B in the record. Apparently that transcript is also contained in the record as record item 92.

The agent's application for the search warrant was submitted to Door County Circuit Judge John D. Koehn. Judge Koehn was elected to the bench in late 1987 or early 1988 (96:16). Ms. McBride had supported Judge Koehn's opponent in the primary, Sven Kirkegaard, and another opponent, Peter C. Diltz, in the actual election (96:16). Immediately after Judge Koehn took office, Ms. McBride began to have problems with him (96:17). As a result of those problems, in September of 1988 and in January of 1989, Ms. McBride wrote letters to Judge Harold V. Froehlich, Chief Judge of the Eight Judicial District, outlining the continuing problems she was having with Judge Koehn in several of her cases. Specifically, Ms. McBride advised Judge Froehlich that she believed Judge Koehn was not treating her or her female clients

fairly (96:17-19; 96B: Exs. A & B; App. 154-81).

On August 31, 1989, Ms. McBride filed a formal complaint with the Wisconsin Judicial Commission concerning Judge Koehn's unfair treatment of her and her female clients (96:20; 96B: Exhibit C; App. 182-224). The Judicial Commission dismissed her complaint in December of 1989 (96:21; 96B: Ex. D).

On October 6, 1989, Ms. McBride received a telephone call from Judge Koehn's court reporter who informed her that Judge Koehn had recused himself from all of her cases before him (96:21-22). Since that date, Ms. McBride had not appeared before Judge Koehn in any adversarial proceedings, although Door County was a one-judge county, and she has appeared in almost 200 cases filed in Door County during that period of time (96:22).

Every time one of Ms. McBride's cases was assigned to Judge Koehn, he recused himself. The majority of applications for judicial assignments submitted by Judge Koehn note the reassignment as "self-disqualification" or "mandatory disqualification" (96:23). Ms. McBride never substituted on Judge Koehn after October 6, 1989, because he always recused himself immediately (96:23-24). Judge Kirk, in his written decision denying the defendant's suppression motion specifically found that "the authorization of this search warrant is the only time since the pattern of recusal began that Judge Koehn has not recused himself in a legal matter when Attorney McBride was involved" (41:2; App. 123).

Ms. McBride's testimony with regard to this issue was corroborated by William Sucha, Court Administrator of the Eighth

Judicial District. He testified that Judge Koehn disqualified himself from a "substantial number" of Ms. McBride's cases (96:171, 173). Admitted as Exhibit G at this hearing was a box filled with judicial assignment orders involving Judge Koehn (96:180-185). Exhibit G is contained in the record as part of item 96B.

In over 150 of the judicial assignment orders, Judge Koehn cited Wis. Stat. 757.19(1)(g) as his reason for recusing himself. This statute provides for self-disqualification "[w]hen a judge determines that, for any reason, he or she cannot, or it appears he or she cannot, act in an impartial manner."

Judge Koehn heard Agent Fassbender's application for the search warrant on June 3, 1991, and authorized its issuance (92:1-29), although it is clear that even

he had some trouble with issuing the warrant against the defendant's law office records (96:26-29). The defendant's challenge to the search, which included, among others, a challenge to Judge Koehn's neutrality (App. 149-51), was denied by Judge Kirk in a written decision entered on December 15, 1992 (4i:1-14: App. 120-48).

Of critical importance to the United States Supreme Court's review of this issue is the fact that the defendant was prevented from calling Judge Koehn as a witness at the suppression hearing. Although the defendant intended to call the judge, the trial court granted the state's request for a protective order and prevented Ms. McBride from questioning the judge under oath as to his bias against her (25:1-2; 32:1).

The Wisconsin Court of Appeals

affirmed this issue (and another issue which is not being brought before the Supreme Court of the United States). The Court of Appeals held that it was the defendant's burden to prove by a preponderance of the evidence that the judge who signed the warrant was actually biased or prejudiced, and that the defendant had failed to meet that burden (App.1 103-19). The Supreme Court of Wisconsin denied the defendant's Petition for Review on both issues (App. 101-02).

ARGUMENT IN SUPPORT OF GRANTING REVIEW

THE UNITED STATES SUPREME COURT SHOULD GRANT REVIEW BECAUSE THE ISSUE PRESENTED IS ONE OF FIRST IMPRESSION, NOT ONLY IN WISCONSIN, BUT IN THE UNITED STATES, AND PRESENTS AN IMPORTANT QUESTION OF CONSTITUTIONAL MAGNITUDE.

A. There are no decisions from Wisconsin or from this Court addressing the proper standard for determining whether a judge who signed a search warrant is "neutral and detached."

The protection offered to all of us by the Fourth Amendment requires that inferences which would support the issuance of search warrant "be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime." Johnson v. United States, 333 U.S. 10, 14 (1946). Although the Wisconsin Supreme Court has likewise acknowledged that a "search warrant may issue only on a finding of probable cause

by a neutral and detached magistrate," Ritacca v. Kenosha County Court, 91 Wis.2d 72,77, 280 N.W.2d 751 (1979), neither it nor the United States Supreme Court has ever delineated a test for measuring the neutrality or detachment of the magistrate.

The United States Supreme Court, however, has applied the requirement of "neutrality and detachment" in several different contexts to invalidate searches made pursuant to warrants.

In Coolidge v. New Hampshire, 403 U.S. 433 (1971), the Court invalidated a search warrant signed by the state attorney general who was acting as a justice of the peace. He was personally in charge of the murder investigation and later served as the chief prosecutor at the trial. The Court found "no escape from the conclusion that the seizure and

search . . . cannot constitutionally rest upon the warrant issued by the state official who was the chief investigator and prosecutor in this case," because "he was not the neutral and detached magistrate required by the constitution." Coolidge at 453. The Court quickly rejected the state's argument that the existence of probable cause cured the problem,[4] citing Agnello v. United States, 269 U.S. 20 (1925) and other cases for the proposition that prohibitions against unlawful searches and seizures are to be protected even if the same result might have been achieved in a lawful way. Coolidge at 450-51.

In Connally v. Georgia, 429 U.S. 245

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[4] In the case at bar, Judge Kirk questioned from the bench whether the fact that there was probable cause cured any problems of Judge Koehn's lack of neutrality or conflict (96:263). He obviously decided that it did.

(1977), the Court invalidated a search warrant issued by an unsalaried justice of the peace who received a fee of five dollars for every warrant he issued, but no fee for reviewing and denying a search warrant application.

In Lo-Ji Sales, Inc. v. New York, 442 U.S. 319 (1979), it was the conduct of the justice who signed the warrant that violated the neutral and detached requirement. After issuing an open-ended warrant which allowed for the determination of whether certain items were obscene to be made during the search itself, the justice then participated in the search by making those obscenity determinations himself. The Court had no trouble concluding that the justice "did not manifest that neutrality and detachment demanded of a judicial officer when presented with a warrant application

for a search and seizure." Lo-Ji Sales at 326.

These cases define what is not "neutral and detached." However, no case from this Court truly defining what "neutral and detached" really means has been found by this defendant.

Courts from other jurisdictions have recognized that the issuing judge can have such a personal interest in the case under investigation so as to result in the loss of the required neutrality. For instance, the Oregon Court of Appeals invalidated a search warrant signed by a judge when the defendant was suspected of sexually assaulting the judge's clerk. State v. Burnam, 66 Or. App. 132, 672 P.2d 1366 (1983). Burnam only involved a question about a judge's concern for his clerk, not himself. In the case at bar, the problem is between the defendant and the judge,

himself, obviously a much more damaging situation to the defendant than in Burnam.

A federal case, United States v. Heffington, 952 F.2d 275 (9th Cir., 1991) scrutinized whether a federal judge, who had been a federal defender eight years prior for one of the defendants in a similar crime, could be a neutral and detached magistrate under the mandates of the Fourth Amendment and determined that he could. The Ninth Circuit stated that the "appearance clearly is not so 'extreme' that it constitutes a constitutional violation." In the case at bar, there is more than an "appearance of impartiality." Judge Koehn, himself, in over 200 cases, stated that he could not be impartial about Challoner Morse McBride.

The Heffington case also muses that "an appearance of partiality may lurk in

the fact that judges and police officers in rural counties often know more about the local criminal recidivists . . . than their more urban colleagues." Heffington at 279. However, this is not the fact in the case at bar. There is absolutely NO allegation that the defendant EVER engaged in any other criminality, had a prior record or was being surveilled concerning any other of her clients besides Mrs. Addison. Furthermore, the negative relationship between Judge Koehn and the defendant was far more enmeshed and personal and had far more potential for retaliation than in any of the cases cited in this brief. In contrast to the Wisconsin Court of Appeals' statement that "McBride's concern over Judge Koehn's impartiality is based solely on her conduct toward him," (Court of Appeals Decision:10; App. 119) the facts are clear

that she is complaining about HIS retaliatory and biased acts toward her: 200 recusals on all her cases for at least two years before he signed the search warrant for her law offices.

None of the decisions reviewed, however, have imposed on a defendant the burden of proving that the judge is actually biased against the defendant. In the case at bar, the Wisconsin Court of Appeals, in reliance on cases from other jurisdictions that dealt generally with the question of judicial bias, has interpreted the defendant's claim to require her to prove, by a preponderance of the evidence, that Judge Koehn was actually biased against her (App. 108-19). None of the cases relied on by the Court of Appeals were even remotely concerned with the "neutral and detached" language applicable in the context of a Fourth

Amendment claim.

The defendant recognizes that claims based merely on the issuing judge's prior acquaintance with the defendant or knowledge of the defendant's past record have properly been denied, State v. Mandravelis, 114 N.H. 634, 325 A.2d 794 (1974), but the facts of this case establish much more than Judge Koehn's simple acquaintance with Ms. McBride. At issue here is the neutrality of a judge who the defendant had vociferously complained about, as to his partiality with her and her female clients, both to the chief judge of the Eighth Judicial District and to the Wisconsin Judicial Commission (96B: Exs. A, B, and C; App. 154-224).

Judge Koehn, in response to those complaints, indicated his unwillingness to continue hearing cases in which the

defendant represented a litigant by uniformly disqualifying himself from each and every one of those cases. Exhibit G, which was introduced into evidence at the suppression hearing, and which contains hundreds of requests for judicial reassignment (96B) establishes without a doubt the Judge's inability to preside impartially over cases involving Ms. McBride as an attorney. How then was it proper for this judge to sit in judgement over the most important decision in the defendant's life, the request for a search warrant for her law office which eventually led to charging and convicting her of a crime she did not commit?

The defendant wants this Court to understand that no contention is made here that every warrant issued by a judge at odds with an attorney is invalid. Nor does the defendant contend that a mere

allegation of partiality requires a finding that the issuing magistrate was not neutral and detached. The facts here, however, add up to much more than a simple disagreement between a judge and a lawyer, and the defendant's claims are more than a mere allegation of partiality. Ms. McBride supported the judge's opponents in their campaigns for election, accused him of treating her and her clients unfairly, at least partially based on her sex, and formally referred him to the Wisconsin Judicial Commission on those same grounds. As a result, the only judge in this one-judge county refused to hear her cases and voluntarily recused himself from over 150 cases.

Contrary to the decision of the Wisconsin Court of Appeals, the defendant should not have to PROVE that Judge Koehn actually used this case to exact some type

of retribution, any more than the defendant in Burnam had to prove that the judge who signed the warrant to search his residence did so to exact revenge for his clerk. It is not the subjective motivation of the judge which is at issue, but the objective application of the facts which established that the judge's personal interest in the case went beyond that which is constitutionally acceptable. In the case at bar, the personal nature of the conflict between Judge Koehn and Challoner Morse McBride, objectively documented by her complaints against him and his response to those complaints, should have resulted in a finding that he was NOT the neutral and detached magistrate that Ms. McBride was entitled to have when the government sought permission to search her law office.

This court should grant review

because the issue presented is properly within its law-declaring function and presents an important constitutional issue of first impression.

B. It was fundamentally unfair to fault the defendant for failing to prove that Judge Koehn was actually biased against her when the trial court had precluded her from calling Judge Koehn as a witness at the suppression hearing.

This Court should also grant review in order to address the propriety of requiring a litigant to prove actual bias against her by a sitting judge, while at the same time preventing the litigant from calling that judge as a witness.

Ms. McBride intended to call Judge Koehn as a witness at the scheduled suppression hearing. The state, however, sought and obtained a protective order from the trial court, preventing her from doing do, on the theory that judges are

immune from questioning concerning their "mental processes" (24:1-9; 32:1).[5] The defendant submits to this Court that it cannot allow the decision of the Wisconsin Court of Appeals to stand without further review of this contradiction.

If the defendant is to be required to prove actual bias when challenging the neutrality of a judge who signs a search warrant, then it follows from that premise that the defendant must be allowed to question the judge, under oath, at the

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[5] Despite the fact that Judge Koehn was not allowed to testify, Judge Kirk quotes Judge Koehn, as if he had testified, in his decision: Judge Koehn did not know anything about the investigation before application was made to him; he did not initiate any investigation of Attorney McBride; he did not profit monetarily; he did not act as a law enforcement officer. (41:6; App. 130-31) No one else at the hearing testified to this information. Only Judge Koehn had this information. Obviously Judge Kirk discussed the matter with Judge Koehn.

suppression hearing. IF, however, the defendant is not to be permitted to so question a sitting judge, then it is neither fair nor logical to adopt a standard that requires proof of actual bias.

It is interesting to note that in Connally v. Georgia, 429 U.S. 245, a case in which the search warrant was declared invalid on the grounds that the issuing magistrate was not "neutral and detached," there was no requirement that the defendant establish actual bias on the part of the judge. Despite this fact, the court of appeals recited at length the testimony of the issuing magistrate at the suppression hearing. Connally at 246-47, n.3. Obviously Connally was allowed to subpoena and question the "mental process" of his issuing magistrate.

It would be ironic indeed to let

stand the decision of the Wisconsin Court of Appeals in this case, which faults the defendant for not proving actual bias of Judge Koehn, when the defendant was prevented by the state's motion and the trial court's ruling from presenting the evidence she needed to establish her claim!

C. This entire matter may well be a cover-up based on sexual discrimination and bias, from the issuing magistrate, to the trial judge, to the Wisconsin Court of Appeals, to the Wisconsin Supreme Court.

Except for Challoner Morse McBride, all of the actors in this entire matter are male: Judge John D. Koehn, Judge Philip M. Kirk,[6] Court of Appeals Justices

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[6] See footnote 5 as to Judge Kirk soliciting behind the scenes "testimony" from Judge Koehn which is NOT on the record anywhere. How on earth could the "facts" on page 5 of his Decision (41) about Judge Koehn be known by Judge Kirk, when they are not in the record, unless he

Myse, Cane, and LaRocque, and all the Wisconsin Supreme Court Justices (except Justice Abrahamson, who dissented from the denial of the Petition for Review, and one other Supreme Court Justice).

This defendant has vociferously proclaimed her innocence on any charges of defrauding or "stealing from" Mrs. Addison from the very beginning and continues to do so. Yet, because of her feminist attitude, her feminist practice of law and the very small, male-dominated community in which she lived, she has been convicted of a crime which she did not commit. This could only occur in a situation where the actors were all male and who all passed on a situation which was very near and dear to their hearts: a feminist attacking one of "their own" on the grounds that he did

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talked to Judge Koehn about them?

not treat her or her female clients fairly.

If this matter is looked at in that light, it is not the light of "high noon" which Judge Kirk proclaims (41:3, App. 125), it is dim twilight and smacks strongly of a cover-up.

CONCLUSION

For all the reasons set forth above, the defendant, Challoner Morse McBride, respectfully requests that this court grant her Petition for Writ of Certiorari.

Respectfully submitted

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